

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

NOV 1 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Toll Free Service Access Codes )

CC Docket No. 95-155

DOCKET FILE COPY ORIGINAL

COMMENTS OF  
SPRINT CORPORATION

Leon M. Kestenbaum  
Jay C. Keithley  
Norina T. Moy  
1850 M St., N.W., Suite 1110  
Washington, D.C. 20036  
(202) 857-1030

November 1, 1995

No. of Copies rec'd  
List ABCDE

047

## Table of Contents

Summary .....	iii
I. EFFICIENT USE OF TOLL FREE NUMBERS .....	1
A. MAKING TOLL FREE NUMBERS AVAILABLE TO SUBSCRIBERS WHO NEED AND WANT THEM .....	2
B. ESCROW DEPOSITS .....	4
C. LAG TIMES .....	5
D. PERSONAL IDENTIFICATION NUMBERS .....	6
II. MECHANICS OF OPENING NEW TOLL FREE CODES .....	7
A. RESERVATION OF NEW TOLL FREE CODES .....	7
B. PHASED INTRODUCTION OF NEW TOLL FREE SERVICE ACCESS CODES (888 AND BEYOND) .....	11
C. TRACKING TOLL FREE NUMBER USAGE .....	13
III. WAREHOUSING OF TOLL FREE NUMBERS .....	14
IV. VANITY NUMBERS .....	18
V. ADMINISTRATION OF THE SMS .....	22
VI. OTHER ISSUES .....	24
A. CIRCUIT BREAKER MODEL .....	25
B. TOLL FREE DIRECTORY ASSISTANCE .....	25
C. PUBLIC AWARENESS EFFORTS .....	26
D. PORTING TOLL FREE NUMBERS WHEN THERE IS A BALANCE DUE .....	26
VII. CONCLUSION .....	27

## Summary

The instant proceeding covers many crucial aspects of the provision and use of toll free service. Many of the suggestions in the NPRM hold promise for encouraging the efficient use and fair allocation of toll free codes and should be adopted. These proposals include:

- limiting the quantity of numbers a resp org may reserve (Sprint recommends that resp orgs be allowed to reserve up to 10%, rather than 15%, of their working toll free numbers);
- shortening certain lag times;
- continuing the first come/first served allocation system, with a modified first come/first served system for vanity numbers;
- adopting four measures to discourage warehousing and hoarding measures: requiring that toll free service subscribers have adequate facilities in place to accommodate the toll free numbers they have obtained; requiring that non-working numbers be disconnected in SMS at the same time they are disconnected in a carrier's network; strictly enforcing prohibitions against brokering; and codifying industry guidelines regarding use of toll free numbers;
- adopting a trigger to alert the industry that the current toll free code is sufficiently near exhaust to begin preparation for deployment of a new toll free code; and
- turning over administration of the toll free database to a neutral entity.

Sprint also supports two other proposals -- use of PIN technology and continuing public education and awareness efforts -- and believes they should be implemented on a voluntary basis.

On the other hand, the NPRM includes several other measures which are cumbersome to implement, are unlikely to be effective, or are otherwise contrary to the public interest. These include proposals relating to mandatory escrow deposits for each newly reserved number; reducing the amount of time a number may be

reserved from 60 days; handicaps on MGI users; and barring competitors of current 800 vanity numbers from obtaining the equivalent number in the new toll free code. These proposals should not be implemented.

Finally, there are two straightforward actions which the Commission can take which will promote the efficient and fair use of toll free codes. First, if it finds that a single carrier is assigning toll free codes to subscribers who do not need or want them, the Commission should require that carrier to show cause why it should be allowed to continue this practice. Second, the Commission should prohibit any resp org from refusing to port a toll free number because there is a balance due associated with that number. This practice impedes portability and is an inappropriate and ineffective mechanism for securing payment.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	DOCKET FILE COPY ORIGINAL
Toll Free Service Access Codes	)	CC Docket No. 95-155

**COMMENTS**

Sprint Corporation, on behalf of Sprint Communications Company, L.P. and the United and Central telephone companies, hereby respectfully submits its comments on the Notice of Proposed Rule-making ("NPRM") in the above-captioned proceeding, released October 5, 1995 (FCC No. 95-419). This proceeding is intended to:

- (1) promote the efficient use of new toll free numbers;
- (2) foster the fair and equitable reservation and distribution of toll free numbers; (3) smooth the transition period preceding introduction of a new toll free code;
- (4) guard against warehousing of toll free numbers; and
- (5) determine how toll free vanity numbers should be treated.

NPRM, ¶2. Sprint firmly supports these goals and comments below on the Commission's proposals for accomplishing them. Sprint also supports the Commission's view that Commission involvement in and resolution of numbering issues is essential to the public interest.

**I. EFFICIENT USE OF TOLL FREE NUMBERS**

The Commission has requested comment on several proposals intended to promote the efficient use of toll free numbers and to avoid their unanticipated rapid depletion: assigning a toll free number to a subscriber only upon "affirmative request" (¶13); requiring a one-time escrow deposit for each toll free number reserved (¶14); changing the amount of time a number is held in

reserved, assigned, disconnect, or suspend status (§§18-19); and requiring the use of personal identification number (PIN) technology in conjunction with the use of some toll free numbers (§20). Sprint addresses each of these proposals *seriatim*.

**A. Making Toll Free Numbers Available to Subscribers Who Need and Want Them**

As noted above, the Commission has sought comment on whether a Resp Org or service provider should have an affirmative request from a subscriber before assigning a toll free number to such a subscriber (§13). Sprint agrees that toll free numbers should be assigned only to those subscribers who actually wish to have such a number. To do otherwise is a waste of a finite and valuable resource. However, it is unclear how widespread the practice of assigning toll free codes to customers who do not need or want them actually is. The Commission has identified one IXC which is automatically assigning an 800 number to each customer of one of its calling plans (fn. 35). If this is an isolated practice, a more efficacious course of action would be for the Commission to direct this IXC to show cause why it (the IXC) should be allowed to continue this practice, rather than to impose a potentially burdensome and extraneous solution on the entire industry.

If the problem of unwanted assignment of codes is so widespread as to justify a requirement that all Resp Orgs or toll free service providers first obtain an affirmative request for service from a subscriber, the Commission must clarify precisely what constitutes an "affirmative" request. Sprint opposes any requirement that Resp Orgs or service providers obtain a separate

signed letter of authorization (LOA) from the subscriber, since LOAs often are quite difficult to obtain. Indeed, requiring a signed LOA for toll free service is a more onerous standard than applies for end users' PIC (primary interexchange carrier) conversions.

Instead of a separate signed LOA, Sprint recommends that other documentation be accepted as proof of affirmative request for service. A signed sales contract, adequately documented notes in the customer files maintained by the service provider,<sup>1</sup> or undisputed customer payment of any monthly recurring or usage charges associated with the toll free number for 2 or more months after initiation of service, all should be accepted as evidence of a subscriber's request for or acceptance of toll free service. Furthermore, because this sort of information generally is held or obtained by the service provider, it should be the responsibility of the toll free service provider rather than the Resp Org to obtain any affirmative request documentation from the toll free service subscriber.<sup>2</sup>

To the extent that the Commission deems it necessary to require retention of affirmative requests for a certain amount of

---

<sup>1</sup> A sales contract might not exist or may not be comprehensive in some cases, e.g., for a customer who requests an additional number but whose sales contract is not rewritten, or a customer who accepts service in response to telemarketing activity. However, comprehensive information (including customer name, title, telephone number, date service was requested, and toll free code(s) assigned) should be entered into the customer's file.

<sup>2</sup> Assuming that the Resp Org and the service provider are different entities, the Resp Org would only have the request from the service provider, not from the service subscriber.

time (§13), Sprint suggests that the retention period be either two years or for the length of service, whichever is shorter. Number portability has substantially increased transfers of service by customers to a new 800 service provider, and it may be administratively burdensome to maintain records for customers who are no longer on a carrier's network after two years.

#### **B. Escrow Deposits**

The Commission has sought comment on whether a one-time deposit into an escrow account should be required for each toll free number held in reserve status (§14). The Commission has suggested that a deposit might encourage Resp Orgs to reserve numbers only when they have customers for such numbers and might discourage parties from warehousing numbers.

Sprint opposes the escrow account proposal for several reasons. First, as the Commission appears to recognize, it is an administrative burden. A fund manager will need to be appointed and appropriate audit mechanisms implemented to ensure the timely collection and repayment of any deposits. The costs associated with managing this fund will need to be recovered from Resp Orgs or service providers, which will likely increase the rates charged to service subscribers.

Second, it is difficult to determine an appropriate escrow amount. If the deposit is too low, it will be ineffective as a means of discouraging unnecessary reservation of toll free numbers. If it is too high, it could pose a financial burden for the Resp Org and discourage some customers from subscribing to toll free service.



Third, escrow deposits will have a disproportionate effect on new customers (especially smaller customers which could ill afford an escrow deposit) and new service providers. An escrow deposit penalizes new users (existing toll free service subscribers presumably would not have to make any escrow deposit) and, to the extent that new service providers have a higher percentage of new (as opposed to transferred) customers, could harm competition in the toll free market.

While Sprint does not support use of escrow deposits to discourage hoarding and warehousing, there are several other measures which can better achieve these goals. These recommendations are discussed in Section III below.

#### C. Lag Times

The Commission has requested comment on whether it is feasible to reduce the amount of time a toll free number can remain in reserved status, or in assigned but not working status; and whether the aging period (disconnect to spare status, or suspended to reactivated status) can be reduced (§§18-19).

Sprint believes that the amount of time a number can be reserved should remain at 60 days. Toll free service subscribers have told Sprint that they need at least this amount of time to advertise the new number and to adequately staff up for the business application for which the new number is being used. Sufficient time must also be set aside to provision, install and test underlying access facilities.<sup>3</sup>

---

<sup>3</sup> At least one RBOC routinely takes between 30-60 days to provision a dedicated access line. The 800 service provider then

Sprint does believe that the amount of time a number is held in assigned but not working status can be reduced from 12 to 9 months. The proposed four month limit (§18) should not be adopted because it is too short and would not recapture a significant quantity of numbers. Many numbers are assigned, but not working, because the customer intends to use them for seasonal applications; a four month limit would not capture seasonal traffic patterns. In addition, a four month limit is insufficient to accommodate some equipment ordering and network design needs.

Sprint believes that the standard amount of time numbers are aged (moved from disconnect to spare status) can be reduced from six to four months. However, if the carrier believes that this aging interval can safely be shortened, the number should be sent to spare status on the date specified by the carrier. On the other hand, if the carrier believes that a four month aging period is not long enough (as might be the case, for example, on a high volume number), the number should remain in disconnect status for an additional period of time based upon a showing that such treatment is warranted. This flexibility is consistent with industry guidelines (see, e.g., §2.2.6), which recognize the need to accommodate extenuating circumstances.

#### **D. Personal Identification Numbers**

Sprint agrees that the use of PIN technology should be encouraged so that a toll free number can be used by multiple subscribers. However, at least for now, the decision to use PIN

---

needs approximately one additional week to install and test the facility.

technology should be left up to the individual carrier and subscriber, rather than mandated by the Commission, for several reasons.

First, as the Commission has noted (§21), PIN technology does not permit portability, may be incompatible with some toll free services, and may be unacceptable to some customers who are averse to dialing extra digits. In addition, PIN technology will not work from rotary phones. SMS would have to be changed (at unknown expense) to recognize the existence of PIN technology and to ensure that a PIN number remains with the end user customer. Finally, use of PINs does not ensure multiple users for a single toll free number. For example, a single user may use a PIN for administrative purposes (e.g., to change parameters in a voice mail system). Under this scenario, PIN technology does not necessarily ensure the more intensive use of toll free codes.

If it turns out that toll free codes are exhausting at an unexpectedly rapid rate, the Commission can always revisit the issue of use of PIN technology. Experience with use of 888 toll free codes should provide valuable insight as to whether PIN technology should be mandated or remain voluntary.

## **II. MECHANICS OF OPENING NEW TOLL FREE CODES**

### **A. Reservation of New Toll Free Codes**

The Commission has sought comment (§23) on how toll free numbers should be reserved and whether the existing reservation guidelines should be codified and/or amended. The Commission noted (*id.*) that industry guidelines specify that requests for

800 numbers are honored based upon availability, on a first come, first served basis, subject to limits on the absolute quantity of numbers any Resp Org can reserve (1000 numbers or 15% of its total quantity of working toll free numbers, whichever is greater).

Sprint believes that toll free numbers should continue to be reserved on a first come, first served basis. This is a straightforward and long-established allocation method which is well understood by both Resp Orgs and toll free service subscribers, and which has been accepted by both the Commission and the courts.<sup>4</sup> The first come, first served system is a neutral allocation method which offers all customers an equal opportunity to obtain a desired number, and obviates the need for dispute resolution in most cases.<sup>5</sup>

Some parties have claimed that large Resp Orgs with multiple terminals are able to reserve "mass quantities of toll free numbers in rapid order," placing smaller, less technologically sophisticated Resp Orgs at a competitive disadvantage since they do not have the same capability (§23). It is true that several

---

<sup>4</sup> See, e.g., *Wold Communications, Inc. v. FCC*, 735 F.2d 1465, 1469-70 (D.C. Cir. 1984); *Spanish International Network Inc. v. RCA American Communications, Inc.*, 78 FCC 2d 1451, 1465-66 (1980) (the Commission believed that filling orders on a first come, first served basis is "reasonable" and a "frequently used and commonly accepted practice among common carriers generally" (footnote omitted)).

<sup>5</sup> While dispute resolution may be helpful in many cases, Sprint opposes its use to determine who should get a number if more than one party requests it. Assuming that each party has an equally legitimate use for a number, it is not clear how an arbitrator would determine who should receive the number.

large Resp Orgs, including Sprint Long Distance, have installed a mechanized generic interface ("MGI"), a direct link between the Resp Org's internal systems and the SMS/800 database. An MGI is crucial for the efficient processing of the large volume of transactions (including reserving numbers) which larger Resp Orgs handle. This interface is available to any Resp Org which decides, on the basis of the relative costs and benefits of an MGI, to install such capability.<sup>6</sup> It makes no sense to penalize entities which have decided to invest in a system which enables them to process orders efficiently; in fact, market forces should encourage, not discourage, such efficiency.<sup>7</sup> Therefore, the Commission should reject any suggestion that Resp Orgs using MGIs should somehow be handicapped in the reservation process.

Except for a modified first come, first served procedure for certain vanity numbers (discussed in Section IV below), Sprint opposes the suggestion (§23) that different reservation procedures should be used for certain "high demand" codes. Reserving codes becomes more complicated if Resp Orgs and customers must acquaint themselves with different procedures for different

---

<sup>6</sup> MGI installation is a tariffed service, for which there is a nonrecurring activation charge of \$308,910.00 per Resp Org, and a nonrecurring charge for initial installation testing of \$212,015.00 per interface. See BOCs' SMS/800 Tariff FCC No. 1, Section 4.2(E).

<sup>7</sup> Sprint is sympathetic to concerns that a large resp org may grab many highly desirable toll free numbers as new codes are opened up. However, strictly enforced rules against hoarding and bartering, and limits on the time a number can remain in reserve status, will be more helpful at discouraging the practice of reserving numbers when the resp org has no customer for those numbers, than arbitrary handicaps on MGI users would be.

codes. More importantly, there are logistical problems associated with separate reservation procedures which might impede the scheduled deployment of the new 888 SAC.

While Sprint believes the rules associated with the reservation process should continue largely along existing lines, there are two areas in which changes are warranted. First, the limits on the quantity of numbers a Resp Org can reserve can be reduced from 15% to 10% of its total working numbers (or 1000 numbers, whichever is greater).<sup>a</sup> There is no reason to suspect that a limit of 10% is onerous for any Resp Org, and the reduction may help prevent excess warehousing of numbers.

Second, the Commission should codify industry guidelines relating to reservation of toll free codes so that compliance with such guidelines is mandatory rather than voluntary. Sprint recommends that the rule adopted by the Commission cite back to industry guidelines; for example, rather than specifying that a Resp Org may reserve a maximum 1000 numbers, the rule should state that a Resp Org may reserve numbers in accordance with §2.2.5 of the *Industry Guidelines*. This provides the industry with some flexibility to revise the rules to meet changing circumstances, and is less cumbersome than a Commission rulemaking proceeding. Of course, the industry guidelines and any changes in those guidelines are subject to Commission review and perhaps could be placed on public notice on an expedited pleading cycle.

---

<sup>a</sup> Sprint submitted this recommendation to the OBF (Issue number 1209), which has accepted it for review. The current limit is 1000 numbers or 15% of total working numbers, whichever is greater.

**B. Phased Introduction of New Toll Free Service Access Codes (888 and Beyond)**

The industry has adopted a plan to phase in the use of the 888 toll free code which involves the setting aside of numbers which customers have expressed interest in replicating, and the reservation (but not activation) of 888 codes 45 days prior to the general availability date for 888 implementation. These measures were designed to protect the integrity of the SMS system, to ensure that new 888 numbers would be in working status as of the 888 general availability date, and to provide some additional time to resolve the questions surrounding number replication. Sprint was actively involved in the development of this interim plan and endorses its implementation.

While Sprint believes that this plan is appropriate for the implementation of the 888 SAC, different procedures should be used for the implementation of toll free codes beyond 888. Because 888 is the first supplemental (*i.e.*, in addition to 800) toll free code, special measures were justified to ensure its smooth implementation. However, as toll free service subscribers and end users become accustomed to the idea that toll free numbers can begin with various 8XX SACs, and as service providers deploy hardware and software capable of recognizing multiple 8XX SACs as toll free codes, the introduction of new toll free codes should become more a case of business as usual than special circumstances which engender panic warehousing and hoarding. For example, it seems less likely that there will be a run on 888 numbers as this code exhausts (as occurred with 800 numbers)

since customers and end user callers presumably will be more receptive to use of other 8XX toll free codes. Moreover, if planning for a new toll free SAC begins with a trigger and the new SAC has a pre-established general availability date, Resp Orgs should be able to manage their reservation requirements to ensure that their customers have their new codes available for use as of the new toll free SAC implementation date. Under these circumstances, there should be no need to make special provision for reservation of numbers in the new code.

Sprint endorses the idea of a trigger to alert the industry that the current toll free code is sufficiently near completion to require that the next toll free code should be prepared for deployment (§27). The INC is currently investigating what an appropriate timeframe is for deploying a new toll free code (Issue Number 55). One idea under consideration involves a 2 year implementation window: when the fill rate on the existing codes is projected to reach 90% within 2 years, implementation of the next toll free code should commence. While Sprint will abide by the timeline adopted by the industry, it is confident that it could meet a shorter implementation cycle, such as the six month cycle suggested by the Commission (§28).

Sprint agrees that the datalink capacity between the SMS/800 and the SCPs should be increased to accommodate a larger volume of transactions. This upgrade is necessary to handle both the increased transaction volumes associated with the growing number of available toll free numbers as well as the roll out of new codes. In the event that the roll out of new toll free SACs



causes a surge in reservation activity which the SMS/800, the SCPs, or other database elements are unable to handle, the industry might consider a phase-in of new toll free numbers on an 8XX-NXX basis (i.e., in 10,000 number blocks).

### C. Tracking Toll Free Number Usage

The Commission has tentatively concluded that "more comprehensive information on the toll free market and on number usage should be publicly available," and that DSMI "should be required to submit periodic reports to the Commission on toll free number utilization" (§31). Sprint agrees that more comprehensive information is needed; however, it opposes having DSMI publicly report anything other than the aggregate quantity of numbers in the various SMS categories (e.g., spare and working status), and the estimated time remaining before the code is exhausted (along with an explanation of the methodology used to make such estimate).<sup>9</sup> No Resp Org-specific information should be published at all. Information such as usage by type of toll free number assignment (business, personal or access) is extremely sensitive and proprietary for each Resp Org, and it is inappropriate for DSMI, which is controlled by the RBOCs -- actual and potential competitors for toll free customers -- to have access to such information.

---

<sup>9</sup> However, if the Commission needs information on the quantity of numbers in each SMS category on a Resp Org-specific basis, DSMI should provide such information to the Commission on a confidential basis.

### III. WAREHOUSING OF TOLL FREE NUMBERS

The Commission has requested comment on what measures can be implemented to discourage warehousing and hoarding, and what penalties should be imposed if Resp Orgs or service subscribers are found to be engaging in such activity (§33). The Commission describes two proposals designed to discourage warehousing and hoarding: decreasing the percentage of numbers a Resp Org may reserve, and requiring certifications from Resp Orgs that they have an identified subscriber for each toll free number reserved and for each number switched from reserved or assigned to working status (§§33-34).

While Sprint supports efforts to prevent warehousing and hoarding of numbers, we would note as an initial matter that it is difficult for Resp Orgs and toll free service providers to distinguish between warehousing/hoarding and legitimate, low or zero volume accounts. A customer may have low or zero usage on its toll free number for several reasons unrelated to hoarding: the number is being maintained for emergency purposes (e.g., to help handle unexpected product recalls); for planned future marketing campaigns; or for seasonal calling. So long as the subscriber is paying the charges associated with that number (and, a competitive market presumably encourages service providers to charge rates which reflect relevant costs, including costs associated with number exhaust), the service provider generally does not probe further to try to determine the reason behind its subscribers' low usage volumes. And, in a highly competitive market, it is unlikely that service providers will take down a sub-

scriber's service on the mere suspicion that such subscriber may be hoarding or warehousing toll free numbers.

Because of the difficulties associated with distinguishing between warehousing/hoarding and legitimate low volume usage, the Commission should not require service providers or Resp Orgs to proactively police their subscribers' use of toll free codes so as to ferret out low usage numbers. However, if credible evidence of a possible violation of the warehousing and hoarding guidelines (or, preferably, Commission rules prohibiting warehousing and hoarding) comes to the attention of a Resp Org, the Resp Org should have an obligation to investigate the situation. Any entity found to be warehousing or hoarding toll free numbers should have those numbers taken away from it and, depending upon the seriousness of the violation, should be audited to determine whether it is engaging in more widespread abuse (*i.e.*, whether it is hoarding other numbers as well).

Although it may be difficult to detect hoarding or warehousing, there are a number of measures which can be implemented to discourage these practices. First, Sprint supports the proposal to decrease the percentage of working numbers a Resp Org may reserve. As discussed above, Sprint believes that this percentage can be decreased to 10% of its total working numbers without unduly disrupting the Resp Org's operations or hampering its ability to meet its customers' service requests.

Second, non-working numbers should be disconnected in SMS at the same time they are disconnected in a carrier's network. It appears that some service providers and/or bundled service pro-

viders may be terminating a subscriber's service from an internal control perspective, but holding that subscriber's number aside for reassignment to another customer (rather than returning the number to spare). In other cases, it appears that PBX equipment is being programmed to withhold answer supervision on calls to certain toll free numbers so that the subscriber is not billed for calls to that number, even though that number appears in SMS to be a working number. Disconnecting an unused number in SMS would make that number available after an appropriate aging period.

Third, Sprint recommends that service providers require that their subscribers have in place sufficient facilities to accept calls over their assigned toll free numbers. For example, limiting the number of toll free numbers which can terminate to a single POTS number, and requiring installation of the minimum access facilities needed to support the toll free numbers, are two measures which help to discourage hoarding.

Fourth, prohibitions against brokering should be strictly enforced. If brokering can be prevented, many subscribers' incentive to hoard numbers will be significantly reduced.

Fifth, Sprint urges the Commission to adopt rules prohibiting warehousing, hoarding and brokering. The industry has adopted voluntary guidelines prohibiting such practices, and some Resp Orgs and toll free service providers have incorporated similar provisions in their interstate tariffs (see, e.g., Sprint FCC Tariff No. 11, Section 2.18.4). However, it would be easier to

enforce such industry guidelines and tariff provisions if they had the force of a Commission rule behind them.

It is not clear that the proposal to require Resp Orgs to certify that they have customers for toll free numbers before they reserve or activate such numbers will promote the Commission's goal of preventing warehousing. Insofar as Sprint is aware, most Resp Orgs do abide by industry guidelines against warehousing; the problem of under- or unutilized numbers appears to be due more to service subscribers than to the service providers. Certifications by the Resp Org will not prevent hoarding by toll free service subscribers. In addition, Resp Org certification may prove to be an administrative burden whose costs outweigh its benefits.

If the Commission does decide to require Resp Org certifications, this proposal should be amended slightly to give Resp Orgs a 2 day window in which to match up a reserved number with a paying subscriber. There are situations in which a toll free service provider needs a small inventory of numbers available for rapid assignment even though it may not have an identified subscriber. For example, a telemarketing operation would need to maintain a small pool of numbers to assign to potential customers. Therefore, consistent with industry guidelines (§2.2.5), Resp Orgs should have 2 business days in which to match an end user subscriber to a reserved toll free number.

#### IV. VANITY NUMBERS

The Commission has requested comment on whether current holders of an 800 vanity number (a verbally significant number or a number in which the holder has a particular economic, commercial, or other interest) "should have a right of first refusal or other priority on the equivalent number drawn from a new toll free code" (§35). The Commission has apparently received many letters from holders of 800 vanity numbers who are concerned about their investment in their numbers (fn. 75).

According to preliminary results of a survey sponsored by ATIS (Alliance for Telecommunications Industry Solutions), current 800 number assignees have indicated that they want to replicate as many as 25% of all working 800 numbers. In discussions with its toll free service subscribers, Sprint Long Distance has learned that subscribers are concerned both with protecting their investment in 800 vanity numbers against fraud and customer confusion (see also NPRM, §42) and with minimizing end user misdials of high volume numbers.<sup>10</sup>

Sprint shares the concerns of toll free service subscribers and intends to work closely with its customers to help them obtain the numbers they want and to help minimize any problems which may arise if they are unable to obtain the numbers they want. For example, Sprint Long Distance has enhanced its inter-

---

<sup>10</sup> Misdials affect both the 800 and 888 number assignees (assuming the two are different). The holder of the 800 number may lose business if the end user customer is unable to reach it because he has mistakenly dialed the 888 number; the holder of the 888 number has its phone engaged and incurs toll charges for that same call even though it derives no benefit from that call.

nal systems to improve its ability to reserve requested numbers for its customers as soon as the numbers become available; amended its internal operating procedures to highlight numbers customers have stated they want replicated; and is working with its customers to educate the public that toll free calling involves a 10-digit code, not a 7-digit 800 number. If there are a large number of misdialled calls from end users trying to reach the previous holder of the toll free code, Sprint Long Distance will offer credits for misdials, and, if misdials turn out to be a recurring problem, will try to get the subscriber another toll free number.

In addition, Sprint is hopeful that a modified first come, first served assignment methodology will satisfactorily balance customers' interest in particular numbers with the need to conserve and fairly allocate a limited resource. Under this plan, numbers in a new toll free SAC for which a replication request is received would be held aside until some trigger point is reached (e.g., when the new SAC has attained a specific fill rate, or after a specific period of time after implementation of the new SAC has elapsed). Until this trigger point is reached, this pool of numbers would not be available for assignment to any customer. Once the trigger point is reached, the numbers would become available to any customer on a first come, first served basis. The additional time these numbers are held aside will provide a greater opportunity for customer education campaigns and directory listing updates. As end users become more familiar with the new toll free SAC, they will be less likely to dial an 888 number

under the mistaken impression that it will connect them with the holder of the equivalent 800 number. Misdials also will be reduced as updated catalogs and directory listings are disseminated.

While the right of first refusal policy may benefit some toll free service subscribers, it is inappropriate given the magnitude of replication requests and the finite nature of the numbering resource. As the Commission has noted (§42), a high replication rate will bring the new toll free code closer to exhaust, and the problem will extend to subsequent toll free codes as well.

Furthermore, it is not clear that the right of first refusal policy constitutes a "fair and reasonable allocation methodology" (§40). It obviously benefits incumbent customers and makes it more difficult for new subscribers to obtain certain "good" numbers. And, underutilization of a scarce resource may well result if a toll free number is replicated for a customer that wants the number simply to prevent another party from using it (e.g., to protect itself against fraud or customer confusion), rather than for its own active use to receive incoming calls.

As an alternative to replication of vanity numbers, the Commission next sought comment on a proposal to bar any competitor of the current holder of an 800 number from obtaining the equivalent 888 (or subsequent toll free SAC) number (§44), and that standard industrial classification (SIC) codes be used to categorize services and industries (§45). This proposal is contrary to the public interest and should not be adopted.



First, the practical difficulties associated with this proposal are enormous. It is extremely difficult and administratively cumbersome to identify the competitors of the current holder of a particular toll free code. For example, service provider personnel would have to be trained to determine (where possible) the appropriate industry code to use for both existing and potential subscribers; some entity would have to resolve disputes over whether a prospective assignee is a competitor or not; the SMS and service provider systems would all have to be upgraded at unknown expense to incorporate SIC-type information; and some mechanisms would have to be devised to resolve the complications which will inevitably arise as to the disposition of equivalent 7-digit numbers in different toll free SACs when technological, strategic, or regulatory changes convert entities in currently unrelated industries into competitors.

Second, it is not at all clear that this type of protection against fraud is even needed. The courts have ruled that a term spelled out by a vanity number may be protected as a trademark or service mark, and that the holder of a toll free number cannot falsely or misleadingly connote to the public an affiliation with the holder of the trademark or service mark.<sup>11</sup> This should offer substantial protection for existing customers who fear that their 7-digit verbally significant toll free number (i.e., the mnemonic) will be advertised in a fraudulent, misleading or confusing manner by the assignee of the equivalent 7-digit number in

---

<sup>11</sup> See, e.g., *American Airlines Inc. v. A 1-800-A-M-E-R-I-C-A-N Corporation*, 622 F. Supp. 673, 682-4 (N.D. Ill. 1985).